

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Edward J. Adams, Jr., Benjamin Hart, and  
Mail Fund, Inc.<sup>1</sup>

MUR 5635

GENERAL COUNSEL'S REPORT #3

**I. ACTIONS RECOMMENDED**

Find probable cause to believe that Edward J. Adams, Jr., and Benjamin Hart violated 2 U.S.C. § 441a(a)(1)(C).

Find probable cause to believe that Mail Fund, Inc. violated 2 U.S.C. § 441b(a) but take no further action and close the file with respect to it.

**II. BACKGROUND**

This matter stems from the Federal Election Commission's ("FEC" or the "Commission") audit of Conservative Leadership Political Action Committee ("CLPAC" or the "Committee").<sup>2</sup> Based on the audit findings, the Commission found reason to believe Edward J. Adams, Jr. ("Adams") and Benjamin Hart ("Hart") made contributions to CLPAC in excess of the limits of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), and that Mail Fund, Inc. ("Mail Fund" or "MFI") made contributions to CLPAC prohibited by

<sup>1</sup> The four principal respondents in this matter (Conservative Leadership Political Action Committee, American Target Advertising, Inc., the Viguerie Company, and ConservativeHQ.com, Inc.) are addressed in General Counsel's Report #2.

<sup>2</sup> This matter, which addressed activity in 1999 and 2000, was referred to the Office of General Counsel on November 19, 2004.

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1 the Act when they advanced funds to pay for the purchase of postage and the rental of mailing  
2 lists. In addition, Mail Fund and Adams paid other vendors for goods and services those vendors  
3 provided to CLPAC and thereby made additional contributions to the Committee.

4 As we explained in the General Counsel's Briefs to Adams, Hart, and Mail Fund  
5 (incorporated herein by reference) and the General Counsel's Report #2, CLPAC engaged  
6 American Target Advertising, Inc. ("ATA") to provide it with a fundraising program in the last  
7 four months preceding the 2000 general election. The agreement between CLPAC and ATA  
8 provided that "[a]ll third-party invoices [would] be incurred in ATA's name" and that CLPAC  
9 would be responsible for paying costs associated with the fundraising "only to the extent of  
10 moneys raised[.]" See Agreement, dated July 6, 2000, Attachment A to Submission of ATA in  
11 Response to Report of the Audit Division on the Conservative Leadership PAC, at 1. ATA  
12 operated the program through a number of direct mail vendors who printed, assembled, and  
13 delivered the solicitations for mailing. ATA and the direct mail vendors were unwilling or  
14 unable to pay for postage and the rental of mailing lists. Adams, Hart, and Mail Fund (the  
15 "postage lenders") provided the necessary funds by advancing money to the direct mail vendors  
16 to pay for postage and list rental. Adams, who was Chief Financial Officer of ATA when the  
17 CLPAC fundraising program took place, explained that the postage lenders would be repaid from  
18 the "first money back on the mailing."<sup>3</sup> Adams advanced funds of \$176,152; Hart advanced  
19 funds of \$133,021; and Mail Fund advanced funds of \$1,490,173. All three postage lenders were  
20 repaid in full, receiving both principal and interest.<sup>4</sup> Nevertheless, the Act defines contributions  
21 to include loans and advances, and because Adams's and Hart's loans exceeded the limit for

<sup>3</sup> Adams's Response to Reason to Believe ("Adams's Response"), February 7, 2005, at 4-5

<sup>4</sup> See Final Audit Report of CLPAC, Attachment 1 to First General Counsel's Report, at 7-8; Mail Fund's Response to Reason to Believe, January 26, 2005, at 2; Adams's Response, at 4-5

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contributions to political committees, their loans constituted excessive contributions.<sup>5</sup> Because  
Mail Fund is a Maryland corporation, its loans constituted prohibited contributions to CLPAC.

While the postage lenders were paid in full, the fundraising proceeds were insufficient to  
pay all the other vendors in full. Mail Fund and Adams paid other vendors for work they did on  
the CLPAC fundraising program, clearing CLPAC debts and making additional contributions to  
CLPAC of \$68,254 and \$25,727, respectively.

**III. DISCUSSION**

<sup>5</sup> All of the facts recounted in this report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act, herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

PAGES 4-5 HAVE BEEN REMOVED

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**B. Mail Fund's Postage Loans Constituted Prohibited Corporate Contributions.**

Mail Fund is a corporation and its loans, which were used to subsidize the fundraising of a federal political committee in connection with the 2000 election, were prohibited contributions under the Act. 2 U.S.C. § 441(b)(b)(2). Mail Fund repeats arguments made in its earlier correspondence, namely that the postage loans were lawful extensions of credit, and that the loans were repaid in their entirety. *Id.* at 2. For the reasons discussed above at pp. 3-4, such arguments are unpersuasive.

In addition to its loans, Mail Fund paid other third-party vendors \$68,254 on CLPAC's behalf for goods and services the vendors provided in support of the CLPAC direct mail fundraising program. By making these loans (\$1,490,173) and payments (\$68,254), Mail Fund made a prohibited corporate contribution of \$1,558,427 to the Committee. 2 U.S.C. § 441b(a);

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1 11 C.F.R. § 100.7(a)(1)(iii)(A). Thus, this Office recommends that the Commission find  
2 probable cause to believe that Mail Fund, Inc. violated 2 U.S.C. § 441b(a) by making prohibited  
3 corporate contributions to Conservative Leadership Political Action Committee.

4 We also recommend that the Commission close the file with respect to this respondent.  
5 The president and founder of this closely-held corporation, James Flemma, died on July 27, 2005  
6 after a long illness. In response to the General Counsel's Brief, counsel contends that there is no  
7 point in proceeding further in this matter, especially as Mr. Flemma in early 2005 had "closed  
8 down the business of MFI and made no further loans." Mail Fund Brief at 2. Since that time,  
9 counsel states that "MFI's only business has been to collect whatever amounts it was owed,"  
10 although he notes that he has not been in contact with Mr. Flemma's widow in order "to learn the  
11 particulars" of MFI's recent operations. *Id.* at 2, n. 1. While a corporation has a legal existence  
12 independent of its principal, the facts here suggest that this corporation's existence will shortly  
13 end. Given that the individual who directed Mail Fund's activity and caused it to violate the Act  
14 has died, that the corporation has made no further loans, and that its only activity consists of  
15 collecting outstanding debt, it is unlikely that Mail Fund will make any more contributions to  
16 political committees in violation of the Act.<sup>7</sup>

17 In order to make clear that Mail Fund's loans constituted contributions, we recommend  
18 that the Commission find probable cause with respect to Mail Fund prior to closing the file. We  
19 note that the Commission's determination to take no further action in MUR 3027 (PAPAC) has  
20 been misinterpreted by the respondents in this matter as a determination that the postage loans  
21 did not constitute a violation of the Act. We would like to avoid a similar misunderstanding with  
22 respect to this recommended disposition regarding Mail Fund.

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<sup>7</sup> In addition, closing the file with respect to Mail Fund will aid in narrowing the scope of this matter

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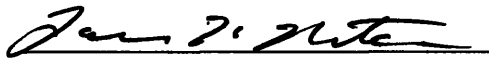
IV. CONCILIATION

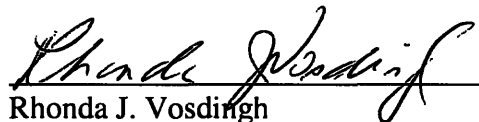
V. RECOMMENDATIONS

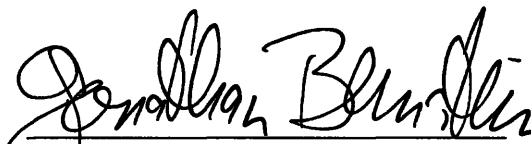
1. Find probable cause to believe that Edward J. Adams, Jr. violated 2 U.S.C. § 441a(a)(1)(C).
2. Find probable cause to believe that Benjamin Hart violated 2 U.S.C. § 441a(a)(1)(C).
3. Find probable cause to believe that Mail Fund, Inc. violated 2 U.S.C. § 441b(a) but take no further action and close the file with respect to it.
- 4.


5. Approve the attached conciliation agreements and appropriate letters.

9/13/05  
Date

  
Lawrence H. Norton  
General Counsel

  
Rhonda J. Vosdingh  
Associate General Counsel for Enforcement

  
Jonathan A. Bernstein  
Assistant General Counsel

  
Beth N. Mizuno  
Attorney

  
Mark A. Goodin  
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Attachments:

1. Conciliation Agreement, Edward J. Adams, Jr.
2. Conciliation Agreement, Benjamin Hart
3. Chart, Statute of Limitations